

APPEAL NO. 023158  
FILED JANUARY 28, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 25, 2002. The hearing officer determined that the respondent's (claimant) lumbar spine injury is compensable "as a matter of law"; that the claimant had disability from June 7, 2002, and continuing to the CCH; and that the appellant (carrier) had waived the right to contest compensability by failing to comply with Sections 409.021 and 409.022.

The carrier appeals, citing Continental Casualty Co. v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet. h.), and arguing that, because there was no injury the claimant did not have a compensable injury, and without a compensable injury the claimant could not have disability. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant was a clerk/cashier in the automobile department of a retail store. The claimant contends that her second day on the job, her back began to hurt, due to lifting batteries. The claimant ultimately had lumbar spinal surgery. The hearing officer found that, while the claimant did not sustain an injury lifting on \_\_\_\_\_, the claimant did have "a disc injury to her lumbar spine."

It is undisputed that the carrier received the first written notice of the injury on June 13, 2002, and did not file its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) until June 24, 2002.

The carrier cites Williamson for the proposition that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." We agree with that proposition, however we find it is not applicable in this case because the hearing officer found, and is supported by medical evidence, that the claimant did have a disc injury to her lumbar spine. We have previously recognized that Williamson is limited to situations where there is a determination that the claimant did not have an injury as defined in Section 401.011(26), as opposed to cases such as this, where there is an injury which was determined by the hearing officer not to be causally related to the employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002; Texas Workers' Compensation Commission Appeal No. 022450, decided November 8, 2002.

Pursuant to Section 409.021(a) and (c) as interpreted by Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), if a carrier fails to begin payment of benefits as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives written notice of the injury, the carrier waives its right to contest compensability. The hearing officer correctly commented that Williamson is not applicable, that the carrier has waived the right to contest compensability and that the claimant sustained a compensable injury by operation of law. The hearing officer's determination on the period of disability is supported by the claimant's testimony and medical evidence.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Terri Kay Oliver  
Appeals Judge